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SENATE BILL 698

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Roman M. Maes III

AN ACT

RELATING TO TRANSPORTATION; ENACTING A NEW MOTOR CARRIER ACT;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 40 of this act may be cited as the "Motor Carrier Act".

Section 2. [NEW MATERIAL] TRANSPORTATION POLICY. -- It is
the policy of this state to foster the development,
coordination and preservation of a safe, sound and adequate
motor carrier system, requiring financial responsibility and
accountability on the part of motor carriers, providing for
economic regulation of motor carriers of persons and household
goods and towing services performing nonconsensual tows and by
streamlining and promoting uniformity of state regulation of
motor carriers.

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1 Section 3. ~~[NEW MATERIAL]~~ DEFINITIONS. --As used in the
2 Motor Carrier Act:

3 A. "amendment" means a permanent change in the type
4 of service or territory authorized by an existing certificate
5 or permit;

6 B. "antitrust laws" means the laws of this state
7 relating to combinations in restraint of trade;

8 C. "base state" means the registration state for an
9 interstate motor carrier that either is subject to regulation
10 or is transporting commodities exempt from regulation by the
11 federal motor carrier safety administration pursuant to the
12 single state registration system;

13 D. "cancellation" means the voluntary, permanent
14 termination of all or part of an operating authority;

15 E. "certificate" means the operating authority
16 issued by the commission to intrastate common motor carriers of
17 persons or household goods;

18 F. "change in a certificate or permit" means the
19 amendment, cancellation, change in tariff, change in form of
20 ownership, lease, reinstatement, transfer or voluntary
21 suspension of a certificate or permit;

22 G. "change of name" means a change in the legal
23 name of the owner of an operating authority or in the does-
24 business-as name of the motor carrier, but does not include a
25 change in the form of ownership;

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1 H. "commission" means the public regulation
2 commi ssi on;

3 I. "common control" means control of more than one
4 operating authority of the same kind for the same or
5 overlapping territory;

6 J. "common motor carrier" means a person offering
7 compensated transportation by motor vehicle to the general
8 public, whether over regular or irregular routes, or under
9 scheduled or unscheduled service, but does not include commuter
10 services;

11 K. "common tariff" means a tariff applying to two
12 or more common motor carriers;

13 L. "commuter service" means a person who provides
14 seven- to fifteen-passenger motor vehicles to a volunteer-
15 driver commuter group that share rides to and from the
16 workplace or training site, where participation is open to the
17 public and incidental to the primary work or training-related
18 purposes of the commuter group, and where the volunteer drivers
19 have no employer-employee relationship with the commuter
20 service;

21 M. "contract motor carrier" means a person offering
22 compensated transportation by motor vehicle under individual
23 agreements with particular customers or shippers;

24 N. "control" means the power to direct or cause the
25 direction of the management and policies of a motor carrier

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1 deriving from:

2 (1) ownership of a sole proprietorship, if the
3 operating authority is held by an individual as a sole
4 proprietor;

5 (2) ownership of ten percent or more of the
6 voting stock of the corporation, if the operating authority is
7 held by a corporation;

8 (3) a partnership interest in a general
9 partnership, if the operating authority is held by a general
10 partnership;

11 (4) an interest in a limited partnership of
12 ten percent or more of the total value of contributions made to
13 the limited partnership, or entitlement to ten percent or more
14 of the profits earned or other compensation paid by the limited
15 partnership, if the operating authority is held by a limited
16 partnership;

17 (5) a membership interest of ten percent or
18 more in a limited liability company, if the operating authority
19 is held by a limited liability company; or

20 (6) capacity as a trustee, personal
21 representative or other person with a fiduciary duty to a motor
22 carrier;

23 0. "electronic filing" means submission of a
24 document by facsimile, electronic mail or other electronic
25 transmission;

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1 P. "financial responsibility" means the ability to
2 respond in damages for liability arising out of the ownership,
3 maintenance or use of a motor vehicle in the provision of
4 transportation services;

5 Q. "highway" means a way or place generally open to
6 the use of the public as a matter of right for the purpose of
7 vehicular travel, even though it may be temporarily closed or
8 restricted for the purpose of construction, maintenance, repair
9 or reconstruction;

10 R. "household goods" means personal effects and
11 property used or to be used in a dwelling when a part of the
12 equipment or supply of the dwelling and other similar property
13 as the federal motor carrier safety administration may provide
14 by regulation, but shall not include property moving from a
15 factory or store, other than property the householder has
16 purchased to use in his dwelling that is transported at the
17 request of, and the transportation charges are paid to the
18 carrier by, the householder;

19 S. "interested person" means a motor carrier
20 operating over the routes or in the territory involved in an
21 application or grant of temporary authority, a person affected
22 by a rule proposed for adoption by the commission or a person
23 the commission may deem interested in a particular matter;

24 T. "interstate motor carrier" means a person
25 providing compensated transportation in interstate commerce,

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1 whether or not the person is subject to regulation by the
2 federal motor carrier safety administration;

3 U. "intrastate motor carrier" means a person
4 providing compensated transportation by motor vehicle between
5 points and places in the state;

6 V. "involuntary suspension" means the temporary
7 cessation of use of all or part of an operating authority
8 ordered by the commission for cause for a stated period of time
9 or pending compliance with certain conditions;

10 W. "irregular route" means that the route to be
11 used by a motor carrier is not restricted to a specific highway
12 within the territory the motor carrier is authorized to serve;

13 X. "lease of a certificate or permit" means an
14 agreement by which the owner of a certificate or permit grants
15 to another the exclusive right to use all or part of the
16 certificate or permit for a specified period of time in
17 exchange for consideration;

18 Y. "lease of equipment" means an agreement whereby
19 a motor carrier obtains equipment owned by another for use by
20 the motor carrier in the exercise of its operating authority;

21 Z. "motor carrier" means a person offering
22 compensated transportation of persons or property by motor
23 vehicle, whether in intrastate or interstate commerce;

24 AA. "motor carrier organization" means an
25 organization approved by the commission to discuss and propose

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1 a common tariff for a group of motor carriers or to represent
2 motor carriers that have adopted the common tariff;

3 BB. "motor carrier of persons" means a person who
4 provides compensated transportation of persons on a highway in
5 the state;

6 CC. "motor vehicle" means a vehicle, machine,
7 tractor, trailer or semi-trailer propelled or drawn by
8 mechanical power and used on a highway in the transportation of
9 property or persons, but does not include a vehicle, locomotive
10 or car operated exclusively on rails;

11 DD. "nonconsensual tow" means the compensated
12 transportation of a motor vehicle by a towing service, if such
13 transportation is performed at the request of a law enforcement
14 officer or without the prior consent or authorization of the
15 owner or operator of the motor vehicle;

16 EE. "operating authority" means a certificate,
17 permit, warrant, single trip ticket, single state registration
18 receipt or temporary authority issued by the commission to a
19 motor carrier;

20 FF. "permit" means the operating authority issued
21 by the commission to intrastate contract motor carriers of
22 persons or household goods;

23 GG. "process" means an order, subpoena or notice
24 issued by the commission or an order, subpoena, notice, writ or
25 summons issued by a court;

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1 HH. "property" means movable articles of value,
2 including cadavers, hazardous matter, farm products, livestock
3 feed, stock salt, manure, wire, posts, dairy products,
4 livestock hauled in lots of twenty-five thousand pounds or
5 more, farm or ranch machinery and the items transported by a
6 towing service, but does not include household goods or
7 unprocessed farm products transported by a farmer from the
8 place of harvesting to market, storage or a processing plant;

9 II. "protest" means a document filed with the
10 commission by an interested person that expresses an objection
11 to a matter before the commission;

12 JJ. "rate" means a form of compensation charged,
13 whether directly or indirectly, by a person for a
14 transportation service subject to the jurisdiction of the
15 commission;

16 KK. "record" means an account, correspondence,
17 memorandum, tape, disc, paper, book or transcribed information
18 regarding the operation of a motor carrier;

19 LL. "registration year" means a calendar year;

20 MM. "regular route" means a route used by a motor
21 carrier within the territory in which the motor carrier is
22 authorized to serve that is fixed by its operating authority;

23 NN. "revocation" means the involuntary, permanent
24 termination of all or part of an operating authority ordered by
25 the commission for cause;

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1 00. "shipper" means a person who consigns or
2 receives goods for transportation;

3 PP. "single state registration receipt" means the
4 document issued annually to a motor carrier operating in
5 interstate commerce evidencing that proof of financial
6 responsibility and safety has been filed with the base state
7 and that the annual per vehicle fees have been paid for that
8 registration year;

9 QQ. "tariff" means a document filed by a motor
10 carrier of persons or household goods or a towing service
11 performing nonconsensual tows that has been approved by the
12 commission and sets forth the transportation services offered
13 by the motor carrier to the general public, including the
14 rates, terms and conditions and applicable time schedules
15 relating to those services, including a common tariff;

16 RR. "towing services" means the use of specialized
17 equipment, including repossession services using towing
18 equipment, to transport:

19 (1) a damaged, disabled or abandoned motor
20 vehicle and its cargo;

21 (2) a motor vehicle to replace a damaged,
22 disabled or abandoned motor vehicle;

23 (3) parts and equipment to repair a damaged,
24 disabled or abandoned motor vehicle;

25 (4) a motor vehicle whose driver has been

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1 declared unable to drive by a law enforcement officer;

2 (5) a motor vehicle whose driver has been
3 removed from the scene or is unable to drive; or

4 (6) a motor vehicle repossessed or seized
5 pursuant to lawful authority;

6 SS. "transfer of a certificate or permit" means a
7 permanent conveyance of all or part of a certificate or permit;

8 TT. "transfer by operation of law" means that the
9 ownership of or interest in a certificate or permit passes to
10 another by application of established rules of law;

11 UU. "voluntary suspension" means the commission-
12 authorized cessation of use of all or part of a certificate or
13 permit at the request of the motor carrier for a specified
14 period of time;

15 VV. "warrant" means the operating authority issued
16 by the commission to charter services, towing services,
17 commuter services and motor carriers of property; and

18 WW. "weight-bumping" means the knowing and willful
19 statement of a fraudulent weight on a shipment of household
20 goods.

21 Section 4. [NEW MATERIAL] POWERS AND DUTIES OF THE
22 COMMISSION. --

23 A. In accordance with the Motor Carrier Act, the
24 commission shall:

25 (1) issue operating authorities for a motor

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1 carrier operating in New Mexico;

2 (2) establish minimum requirements for
3 financial responsibility for a motor carrier;

4 (3) establish safety requirements for
5 intrastate motor carrier motor vehicles and drivers subject to
6 the jurisdiction of the commission;

7 (4) establish reasonable requirements with
8 respect to continuous and adequate service to be provided under
9 an operating authority;

10 (5) regulate the rates of intrastate common
11 motor carriers of persons and household goods and towing
12 services performing nonconsensual tows, including rates for
13 storing household goods and motor vehicles;

14 (6) determine matters of public convenience
15 and necessity relating to motor carriers;

16 (7) subpoena witnesses and records, enforce
17 its subpoenas through a court and, through the court, seek a
18 remedy for contempt;

19 (8) hold a public hearing specific to a
20 protest or request that has been filed timely in opposition to
21 or in consideration of an application; and

22 (9) adopt rules, issue orders and conduct
23 activities necessary to implement and enforce the Motor Carrier
24 Act.

25 B. The commission may:

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1 (1) designate inspectors who may inspect the
2 records of a motor carrier subject to the Motor Carrier Act and
3 who shall have the powers of peace officers in the state's
4 political subdivisions with respect to a law or rule that the
5 commission is empowered to enforce pursuant to Section 65-1-6
6 NMSA 1978, excluding the enforcement authority granted to the
7 motor transportation division of the department of public
8 safety;

9 (2) institute civil actions in the district
10 court of Santa Fe county in its own name to enforce the Motor
11 Carrier Act, its orders and rules, and in the name of the state
12 to recover assessments of administrative fines;

13 (3) from time to time, modify the type of
14 service, territory, terms, conditions and limitations of
15 operating authorities previously issued, and change or rescind
16 rates previously adopted as needed; and

17 (4) adopt rules to implement these powers.

18 Section 5. [NEW MATERIAL] APPLICATIONS IN GENERAL--WHEN
19 PUBLIC HEARINGS REQUIRED. --

20 A. A person shall file an application if commission
21 approval is required. An application shall be made in writing,
22 verified under oath and be in a form that contains information
23 and is accompanied by proof of service upon interested persons
24 as required by the commission.

25 B. The commission shall streamline and simplify to

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1 the extent possible the process for approving applications.
2 The commission may hold a public hearing specific to a protest
3 or request that has been timely filed in opposition to or in
4 consideration of an application.

5 C. The commission shall hold a public hearing on an
6 application whenever an interested person protests the
7 application during the notice period or the transportation
8 division of the commission requests a hearing during the notice
9 period.

10 D. The commission may approve or deny an
11 application in whole or in part.

12 Section 6. [NEW MATERIAL] NOTICE. --

13 A. If the Motor Carrier Act requires publication of
14 notice regarding an application before the commission, the
15 requirement is met if notice is published once in a newspaper
16 of general circulation in the state. The commission shall not
17 act on the application less than twenty days after the date
18 notice was published.

19 B. Whenever the Motor Carrier Act requires
20 publication of notice regarding a matter other than an
21 application, the requirement is met if notice is published once
22 in a newspaper of general circulation in the state. The
23 commission shall not act on a matter less than ten days after
24 the date notice was published.

25 Section 7. [NEW MATERIAL] OPERATING AUTHORITIES IN

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1 GENERAL. --

2 A. A certificate, permit or warrant shall be
3 effective from the date issued by the commission and shall
4 remain in effect until canceled or revoked. A single state
5 registration receipt for interstate motor carriers shall be
6 effective only for the registration year for which it is
7 issued. A single trip ticket shall be effective only for the
8 duration of the trip for which it is issued.

9 B. A motor carrier shall carry a copy of its
10 operating authority in each motor vehicle it operates in New
11 Mexico.

12 C. A motor carrier shall render reasonably
13 continuous and adequate service as the commission may by rule
14 prescribe.

15 D. A motor carrier shall comply with lawfully
16 adopted rules of the commission.

17 Section 8. [NEW MATERIAL] CERTIFICATES FOR INTRASTATE
18 COMMON MOTOR CARRIERS OF PERSONS. --

19 A. A common motor carrier of persons shall not
20 provide compensated intrastate transportation in the state
21 without a certificate from the commission.

22 B. Except as provided in this section, the
23 commission shall issue a certificate allowing a person to
24 provide compensated intrastate transportation as a common motor
25 carrier of persons after notice and public hearing requirements

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1 are met, if:

2 (1) the person is fit, willing and able to
3 provide the transportation service to be authorized by the
4 certificate;

5 (2) the person is in compliance with the
6 safety and financial responsibility requirements of the Motor
7 Carrier Act, the rules of the commission and other applicable
8 federal and state laws and rules; and

9 (3) the transportation service to be provided
10 under the certificate is or will serve a useful public purpose
11 that is responsive to a public demand or need.

12 C. Before granting a certificate to an intrastate
13 common motor carrier of persons, the commission shall consider
14 the effect that issuance of the certificate would have on
15 existing motor carriers; provided that the commission shall not
16 find diversion of revenue or traffic from an existing motor
17 carrier to be, in and of itself, sufficient grounds for denying
18 the certificate.

19 D. A certificate issued by the commission to an
20 intrastate common motor carrier of persons shall specify the:

21 (1) service to be rendered;
22 (2) territory to be served; and
23 (3) reasonable terms, conditions and
24 limitations as the public convenience and necessity may
25 require; and, if necessary:

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1 (a) terminals between which service is
2 to be provided; or

3 (b) routes, schedules and intermediate
4 and off-route points on the route for regular route service.

5 Section 9. [NEW MATERIAL] CERTIFICATES FOR INTRASTATE
6 COMMON MOTOR CARRIERS OF HOUSEHOLD GOODS. --

7 A. A common motor carrier of household goods shall
8 not provide compensated intrastate transportation in the state
9 without a certificate from the commission.

10 B. Except as provided in this section, the
11 commission shall issue a certificate allowing a person to
12 provide compensated intrastate transportation as a common motor
13 carrier of household goods after notice and public hearing
14 requirements are met, if:

15 (1) the person is fit, willing and able to
16 provide the transportation to be authorized by the certificate;

17 (2) the person is in compliance with the
18 safety and financial responsibility requirements of the Motor
19 Carrier Act, the rules of the commission and other applicable
20 federal and state laws and rules; and

21 (3) the transportation service to be provided
22 under the certificate is or will serve a useful public purpose,
23 responsive to a public demand or need. The proposed
24 transportation service will be deemed to serve a useful public
25 purpose, responsive to a public demand or need, if the

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1 application is for authority to provide:

2 (a) transportation to a community not
3 regularly served by an authorized intrastate common motor
4 carrier of household goods;

5 (b) transportation services that will be
6 a direct substitute for abandoned rail service to a community
7 if the abandonment results in the community not having rail
8 service and if the application is filed within one hundred
9 twenty days after the abandonment has been approved by the
10 commission or by the federal railway administration; or

11 (c) transportation for the United States
12 government of used household goods that is incidental to a pack
13 and crate service on behalf of the department of defense.

14 C. Before granting a certificate to an intrastate
15 common motor carrier of household goods, the commission shall
16 consider the effect that issuance of the certificate would have
17 on existing carriers; provided that the commission shall not
18 find diversion of revenue or traffic from an existing carrier
19 to be, in and of itself, sufficient grounds for denying the
20 certificate.

21 D. A certificate issued by the commission to an
22 intrastate common motor carrier of household goods shall
23 specify the territory to be served.

24 Section 10. [NEW MATERIAL] PERMITS FOR INTRASTATE
25 CONTRACT MOTOR CARRIERS OF PERSONS OR HOUSEHOLD GOODS. --

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1 A. A contract motor carrier shall not provide
2 compensated intrastate transportation of persons or household
3 goods in the state without first having applied for and
4 obtained a permit from the commission.

5 B. Except as provided in this section, the
6 commission shall issue a permit allowing a person to provide
7 compensated intrastate transportation as a contract motor
8 carrier of persons or household goods after notice and public
9 hearing requirements are met, if:

10 (1) the person is fit, willing and able to
11 provide the transportation to be authorized by the permit;

12 (2) the person is in compliance with the
13 safety and financial responsibility requirements of the Motor
14 Carrier Act, the rules of the commission and other applicable
15 federal and state laws and rules; and

16 (3) the transportation to be provided under
17 the permit is or will be consistent with the public interest.

18 C. Before granting a permit to an intrastate
19 contract motor carrier of persons, the commission shall
20 consider:

21 (1) the number of customers to be served by
22 the carrier;

23 (2) the nature of the transportation proposed
24 to be provided;

25 (3) whether granting the permit would endanger

1 or impair the operations of motor carriers protesting the
2 application for a permit to an extent contrary to the public
3 interest;

4 (4) the effect that denying the permit would
5 have on the person applying for the permit and its customers;
6 and

7 (5) the changing character of the requirements
8 of the applicant's customers.

9 D. The commission shall not issue a permit to an
10 intrastate contract motor carrier of persons if it finds that
11 the authority sought will impair the provision of
12 transportation services by a certificated intrastate common
13 motor carrier of persons then serving the same territory.

14 E. Before granting a permit to an intrastate
15 contract motor carrier of household goods, the commission shall
16 consider:

17 (1) whether granting the permit would endanger
18 or impair the operations of carriers protesting the application
19 for a permit to an extent contrary to the public interest; and

20 (2) the effect that denying the permit would
21 have on the person applying for the permit and its shippers.

22 F. A permit issued by the commission shall specify
23 the business of the intrastate contract motor carrier, the
24 scope of the authority granted to it and the terms, conditions
25 and limitations of the authority.

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1 G. An intrastate contract motor carrier of persons
2 or household goods shall file with the commission each contract
3 under which it intends to operate. The commission shall
4 approve a contract and authorize operations if it finds that
5 the contract is consistent with the public interest and the
6 provisions of this section.

7 H. The commission shall not limit an intrastate
8 contract motor carrier of persons or household goods to a fixed
9 number of contracts.

10 I. A motor carrier owning a certificate and a
11 permit for the same type of service may use the same equipment
12 for both common and contract services provided that shared use
13 does not impair the provision of transportation services under
14 the certificate.

15 Section 11. [NEW MATERIAL] TEMPORARY AUTHORITY FOR
16 INTRASTATE MOTOR CARRIERS OF PERSONS OR HOUSEHOLD GOODS. --

17 A. The commission may without notice grant
18 temporary operating authority to an intrastate motor carrier of
19 persons or household goods for a period not to exceed ninety
20 days if it finds that:

21 (1) there is an urgent and immediate need for
22 such service; and

23 (2) the applicant for temporary authority has
24 a complete application for a certificate or permit or for
25 amendment, lease or transfer of all or part of a certificate or

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1 permit, pending before the commission.

2 B. Satisfactory proof of urgent and immediate need
3 shall be made by affidavit or other verified proof as the
4 commission shall by rule prescribe.

5 C. An applicant for temporary authority as a common
6 motor carrier shall file tariffs covering the transportation
7 services for which temporary authority is being sought.

8 D. After temporary authority has been granted, the
9 applicant shall give notice of the grant of temporary authority
10 to a motor carrier authorized to perform the service
11 temporarily authorized. If such motor carrier or the staff of
12 the transportation division of the commission files a written
13 request for a hearing within twenty-five days of the date
14 notice was mailed, the commission shall hold a public hearing
15 and make such further determination with respect to the grant
16 of temporary authority as the public interest may require.

17 E. Intrastate motor carriers operating under
18 temporary authority shall comply with the requirements of the
19 Motor Carrier Act and the rules of the commission.

20 F. A grant of temporary authority shall not create
21 a presumption that permanent authority will be granted.

22 Section 12. [NEW MATERIAL] WARRANTS. --

23 A. It is unlawful for any commuter service, charter
24 service, towing service or motor carrier of property to provide
25 compensated intrastate transportation in the state without a

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1 warrant from the commission.

2 B. The commission shall issue a warrant that allows
3 a person to provide compensated intrastate transportation as a
4 commuter service, charter service, towing service or motor
5 carrier of property if the commission finds that the person is
6 in compliance with the financial responsibility and safety
7 requirements of the Motor Carrier Act and the rules of the
8 commission.

9 C. A person may protest an application for a
10 warrant if the person has reason to believe that the applicant
11 does not meet the safety or financial responsibility
12 requirements of the Motor Carrier Act and the rules of the
13 commission.

14 D. A warrant shall not be transferred or leased to
15 another person.

16 E. The commission may without notice or a public
17 hearing cancel a warrant if the owner fails to operate under
18 the warrant for twelve consecutive months.

19 Section 13. [NEW MATERIAL] PROTESTS OF APPLICATIONS FOR A
20 CERTIFICATE OR PERMIT OR FOR A CHANGE IN A CERTIFICATE OR
21 PERMIT. --

22 A. A contract motor carrier shall not protest an
23 application for a certificate or for a change in a certificate.

24 B. A common or contract motor carrier shall not
25 protest an application for a permit or for a change in a

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1 permit.

2 C. A common motor carrier shall not protest an
3 application for a certificate or for a change in a certificate
4 unless:

5 (1) it possesses authority to handle, in whole
6 or in part, the traffic for which the applicant seeks
7 authority, or it has pending before the commission an
8 application for authority for substantially the same traffic
9 filed prior to the application to be protested; and

10 (2) it is willing and able to provide service
11 that meets the reasonable needs of the customers or shippers
12 involved; and

13 (3) it has provided service within the scope
14 of the protested application during the previous twelve-month
15 period, or has actively and in good faith solicited service
16 within the scope of the protested application during such
17 period; or

18 (4) the commission grants leave to intervene
19 upon a showing of other interests that are not contrary to the
20 provisions of the Motor Carrier Act.

21 Section 14. [NEW MATERIAL] CHANGES IN CERTIFICATES OR
22 PERMITS. --

23 A. A change in a certificate, permit or tariff
24 shall not be valid or effective without the approval of the
25 commission.

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1 B. The commission may, for good cause and after
2 notice and public hearing requirements are met, authorize the
3 following changes in all or part of a certificate or permit at
4 the request of the person owning the certificate or permit if
5 the commission finds:

6 (1) that the proposed rates are reasonable,
7 non-predatory and nondiscriminatory for a change in a tariff;

8 (2) that the applicant meets the requirements
9 pursuant to Section 8 of the Motor Carrier Act for an amendment
10 of a certificate as a common motor carrier of persons;

11 (3) that the applicant meets the requirements
12 pursuant to Section 10 of the Motor Carrier Act for an
13 amendment of a permit as a contract motor carrier of persons;

14 (4) that the applicant meets the requirements
15 pursuant to Section 9 of the Motor Carrier Act for an amendment
16 of a certificate as a common motor carrier of household goods;

17 (5) that the applicant meets the requirements
18 pursuant to Section 10 of the Motor Carrier Act for an
19 amendment of a permit as a contract motor carrier of household
20 goods;

21 (6) that for a transfer of all or part of a
22 certificate or permit:

23 (a) the transferee-applicant is fit,
24 willing and able to provide the authorized transportation
25 services and to comply with the Motor Carrier Act and the rules

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1 of the commission;

2 (b) the transferor-applicant has
3 rendered reasonably continuous and adequate service prior to
4 the application for lease or transfer;

5 (c) accrued taxes, rents, wages of
6 employees and other indebtedness pertaining to all or part of a
7 certificate or permit proposed to be transferred have been paid
8 by the transferor-applicant or assumed by the transferee-
9 applicant;

10 (d) the transfer does not have the
11 effect of destroying competition or creating a monopoly; and

12 (e) the transfer is not inconsistent
13 with the public interest; or

14 (7) that for a lease of all or part of a
15 certificate or permit:

16 (a) the lessee-applicant is fit, willing
17 and able to provide the authorized transportation services and
18 to comply with the Motor Carrier Act and the rules of the
19 commission;

20 (b) the lessor-applicant has rendered
21 reasonably continuous and adequate service prior to the
22 application for lease;

23 (c) the lease does not have the effect
24 of destroying competition or creating a monopoly; and

25 (d) the lease is not inconsistent with

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1 the public interest.

2 C. The commission may, without notice or a public
3 hearing, authorize the following changes in all or part of a
4 certificate or permit at the request of the person owning the
5 certificate or permit:

6 (1) cancellation of the certificate or permit;

7 (2) voluntary suspension of the certificate or
8 permit;

9 (3) change in the form of ownership of the
10 certificate or permit; and

11 (4) reinstatement of the certificate or permit
12 following voluntary suspension.

13 Section 15. [NEW MATERIAL] MULTIPLE OPERATING AUTHORITIES
14 ALLOWED-- COMMON CONTROL AND SHAM COMPETITION PROHIBITED. --

15 A. A person may simultaneously hold a certificate
16 as a common motor carrier, a permit as a contract motor carrier
17 and a warrant authorizing transportation by motor vehicle over
18 the same routes or within the same territory, if the commission
19 finds that the multiple operating authorities are consistent
20 with the public interest.

21 B. A person shall not control more than one
22 certificate or more than one permit for the same kind of
23 service in the same territory.

24 C. The commission shall not grant any new operating
25 authority to a motor carrier that:

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1 (1) duplicates operating authority of the same
2 kind and for the same territory already held by that motor
3 carrier; or

4 (2) is under common control with another motor
5 carrier that duplicates operating authority of the same kind or
6 for the same or overlapping territory already held by either of
7 them

8 D. If two motor carriers come to be held in common
9 control, and each motor carrier has operating authority that
10 duplicates the operating authority of the other, then one of
11 them shall have its operating authority modified to exclude the
12 portion of the operating authority that is of the same kind and
13 for the same territory, but shall be allowed to operate in the
14 name and under the operating authority of the other motor
15 carrier with which it is held in common control.

16 E. Motor carriers of household goods possessing
17 both a certificate and permit may transport mixed loads of
18 common and contract motor carrier household goods.

19 Section 16. [NEW MATERIAL] INTERSTATE MOTOR CARRIERS. --

20 A. A motor carrier engaged in interstate commerce
21 shall not provide compensated interstate transportation of
22 persons or property on the highways of this state without a
23 single state registration receipt from a base state. The
24 commission is authorized to issue single state registration
25 receipts without notice or a public hearing.

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1 B. The commission is authorized to collect an
2 annual per vehicle fee, enter into agreements with state
3 agencies and other state governments and promulgate rules
4 necessary to enable New Mexico to participate in the single
5 state registration system or its successor system for
6 interstate motor carriers either subject to regulation, or
7 transporting commodities exempt from regulation, by the federal
8 motor carrier safety administration pursuant to Section 4005 of
9 the federal Intermodal Surface Transportation Efficiency Act of
10 1991, and implementing regulations promulgated by the federal
11 motor carrier safety administration.

12 C. The commission shall require an application,
13 proof of financial responsibility and a single state
14 registration receipt showing that the annual per vehicle fee
15 has been paid for New Mexico from an interstate motor carrier
16 transporting commodities exempt from regulation by the federal
17 motor carrier safety administration in interstate commerce on
18 the highways of the state, but shall not require payment of
19 duplicate annual per vehicle fees from an interstate motor
20 carrier transporting both exempt and regulated commodities.

21 D. Compliance by an interstate motor carrier with
22 the provisions of the federal Intermodal Surface Transportation
23 Efficiency Act of 1991 shall not authorize a carrier to provide
24 intrastate transportation services in New Mexico. An
25 interstate motor carrier wishing to provide compensated

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1 transportation in intrastate commerce shall apply for the
2 appropriate intrastate operating authority from the commission.

3 Section 17. [NEW MATERIAL] SINGLE TRIP TICKETS. -- The
4 owner of a motor vehicle regularly used to convey children to
5 and from school or school activities shall not use the motor
6 vehicle for compensated transportation for a single trip
7 sponsored by a charitable organization without a single trip
8 ticket from the commission. An application for a single trip
9 ticket shall be in a form prescribed by the commission and
10 shall state the time, purpose, origin and destination of the
11 trip and the name, purpose and status of the charitable
12 organization sponsoring the trip. The commission may issue a
13 single trip ticket without notice or a public hearing only if
14 it finds that no certificated or permitted common or contract
15 motor carrier service is available for the trip described in
16 the application and that the motor vehicle to be used for the
17 trip complies with the safety requirements prescribed by the
18 Motor Carrier Act and the commission's rules.

19 Section 18. [NEW MATERIAL] FINANCIAL RESPONSIBILITY. --

20 A. A motor carrier shall not operate on the
21 highways of this state without having filed with the commission
22 proof of financial responsibility in the forms and amounts as
23 the commission shall by rule prescribe.

24 B. In prescribing minimum requirements for
25 financial responsibility for motor carriers, the commission

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1 shall consider:

2 (1) the creation of sufficient incentives to
3 motor carriers to maintain and operate their equipment in a
4 safe manner;

5 (2) the number of passengers being
6 transported;

7 (3) the nature of the transportation services
8 provided by the motor carrier; and

9 (4) other factors necessary to ensure that
10 motor carriers maintain an appropriate level of financial
11 responsibility.

12 C. The commission may authorize a motor carrier to
13 carry its own insurance in lieu of filing a policy of
14 insurance, certificate showing the issuance of a policy of
15 insurance or a surety bond. In approving an application to be
16 self-insured, the commission shall consider:

17 (1) the financial stability of the carrier;

18 (2) previous loss history of the carrier;

19 (3) the safety record of the carrier;

20 (4) the size, nature of operations and other
21 operating characteristics of the carrier; and

22 (5) other factors necessary for the protection
23 of passengers, shippers and the public.

24 D. Notwithstanding any requirement of the New
25 Mexico Insurance Code to the contrary, the commission may

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1 accept proof of public liability insurance from an insurer not
2 authorized in New Mexico if:

3 (1) the insurance is for an interstate motor
4 carrier transporting commodities exempt from regulation by the
5 federal motor carrier safety administration participating in
6 the single state registration system for those motor carriers;
7 and

8 (2) the insurer is authorized to write public
9 liability insurance in at least one other state.

10 E. All motor carriers shall carry proof of
11 financial responsibility in each motor vehicle they operate in
12 this state.

13 Section 19. [NEW MATERIAL] SAFETY REQUIREMENTS FOR MOTOR
14 VEHICLES AND DRIVERS USED IN COMPENSATED TRANSPORTATION. --

15 A. A motor carrier shall provide safe and adequate
16 service, equipment and facilities for the rendition of
17 transportation services in this state.

18 B. The commission shall prescribe safety
19 requirements for drivers and for motor vehicles weighing
20 twenty-six thousand pounds or less or carrying fifteen or fewer
21 persons, including the driver, used by intrastate motor
22 carriers operating in this state. The commission may prescribe
23 additional requirements related to safety, including driver
24 safety training programs, vehicle preventive maintenance
25 programs, inquiries regarding the safety of the motor vehicles

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1 and drivers employed by a motor carrier, and the
2 appropriateness of the motor vehicles and equipment for the
3 transportation services to be provided by the motor carrier.

4 C. A ~~commuter~~ service shall certify that it has a
5 program providing for an initial drug test for a person seeking
6 to be a ~~commuter~~ service driver. The program shall use
7 reasonable collection and analysis procedures to ensure
8 accurate results, require testing only for substances
9 controlled by federal regulation of commercial motor carriers
10 and ensure the confidentiality of the test results and medical
11 information obtained.

12 D. The motor transportation division of the
13 department of public safety may immediately order, without
14 notice or a public hearing, a motor vehicle to be taken out of
15 service for violation of a federal or state law or rule
16 relating to safety if the violation would endanger the public
17 health or safety.

18 Section 20. [NEW MATERIAL] TARIFFS. --

19 A. An intrastate ~~common~~ motor carrier of persons or
20 household goods or a towing service performing nonconsensual
21 tows shall not ~~commence~~ operations or perform a new service
22 under its operating authority without approval of a tariff from
23 the ~~commi~~ssion.

24 B. An intrastate ~~common~~ motor carrier of persons or
25 household goods and a towing service performing nonconsensual

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1 tows shall file with the commission proposed tariffs showing
2 the rates, terms and conditions for transportation and related
3 services between points in its territory. The rates shall be
4 stated in terms of United States currency.

5 C. An intrastate common motor carrier of persons or
6 household goods or a towing service performing nonconsensual
7 tows shall not charge, or permit its bona fide agents or
8 employees to charge, a different rate for transportation or for
9 a service rendered to or for the user of the service other than
10 the rates specified in approved tariffs in effect at the time.
11 The rates of an otherwise valid tariff are not applicable when
12 a medicaid program directly pays for services.

13 D. An intrastate common motor carrier of persons or
14 household goods or a towing service performing nonconsensual
15 tows shall not refund, directly or indirectly, a portion of the
16 rate specified in its approved tariff, offer to a person
17 privileges or facilities, perform a service or remit anything
18 of value except in accordance with tariffs approved by the
19 commission.

20 E. A person may make a complaint in writing to the
21 commission that an individual or joint rate or practice is in
22 violation of the Motor Carrier Act. The commission may suspend
23 the operation of a rate or practice for a period not to exceed
24 sixty days to investigate its reasonableness. If the
25 commission finds that an individual or joint rate charged by an

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1 intrastate common motor carrier of persons or household goods
2 or a towing service performing nonconsensual tows, or an
3 individual or joint practice of any intrastate common motor
4 carrier of persons or household goods or any towing service
5 performing nonconsensual tows affecting the rate, is
6 unreasonable, predatory or discriminatory, the commission shall
7 prescribe the rate or the maximum or minimum rate to be
8 observed or the practice to be made effective.

9 Section 21. [NEW MATERIAL] RATES. --

10 A. An intrastate common motor carrier of persons or
11 household goods and a towing service performing nonconsensual
12 tows shall observe reasonable, nonpredatory and
13 nondiscriminatory rates and practices for the transportation
14 services they provide. An unreasonable, predatory or
15 discriminatory charge for service is unlawful.

16 B. Reduced rates for students traveling between
17 their homes and their schools and for persons sixty-five years
18 of age or older shall not be considered discriminatory within
19 the meaning of this section. A motor carrier shall not furnish
20 free transportation to persons except to bona fide owners,
21 officers or employees of the motor carrier and their
22 dependents. Stockowners of incorporated motor carriers shall
23 not be considered owners for purposes of this subsection.

24 C. An intrastate common motor carrier of persons or
25 household goods or a towing service performing nonconsensual

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1 tows shall not give an unreasonable advantage to a person,
2 point of entry, territory or classification of motor carrier in
3 any respect; provided that towing services performing
4 nonconsensual tows may charge rates lower than the rates in
5 their approved tariff to members of not-for-profit motor clubs
6 after those rates have been filed with the commission; and
7 further provided that this subsection shall not be construed to
8 apply to disadvantages to the transportation service of other
9 motor carriers.

10 D. A common motor carrier of household goods shall
11 establish and observe just and reasonable rates and practices
12 relating to the manner and method of presenting, marking,
13 packing and delivering household goods for transportation and
14 other matters relating to the transportation of household
15 goods.

16 E. An intrastate common motor carrier of persons or
17 household goods and a towing service performing nonconsensual
18 tows shall establish with each other reasonable through routes
19 and joint rates and practices. Participating motor carriers
20 shall have the duty to establish reasonable practices in
21 connection with joint transportation and reasonable and
22 equitable divisions of the joint rates adopted so as not to
23 unduly prefer or prejudice any participating motor carrier.

24 F. In proceedings to determine the reasonableness
25 of rates, the commission shall authorize revenue levels that

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1 are adequate under honest, economical and efficient management
2 to cover total operating expenses, including the operation of
3 leased motor vehicles, and depreciation, plus a reasonable
4 profit. The rules adopted by the commission to implement this
5 section shall allow a carrier to achieve revenue levels that
6 will provide a flow of net income, plus depreciation, adequate
7 to support prudent capital outlays, ensure the repayment of a
8 reasonable level of debt, permit the raising of needed equity
9 capital and attract and retain capital in amounts adequate to
10 provide a sound motor carrier transportation system in the
11 state.

12 Section 22. [NEW MATERIAL] TIME SCHEDULES. --

13 A. An intrastate common motor carrier of persons
14 providing scheduled service to the general public shall file a
15 proposed time schedule with its application for a certificate.
16 The commission shall approve the time schedule before the
17 schedule is put into effect.

18 B. Failure by an intrastate common motor carrier of
19 persons to operate the service on each day as scheduled shall
20 result in an appropriate penalty as the commission, in its
21 discretion, shall determine.

22 C. A time schedule shall not be designed to require
23 the operation of a motor vehicle between given terminals or
24 between way stations at a rate of speed greater than the
25 maximum speed allowed.

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1 Section 23. [NEW MATERIAL] MOTOR CARRIER ORGANIZATIONS--
2 COMMON TARIFFS. --

3 A. An intrastate common motor carrier may enter
4 into discussions with another intrastate common motor carrier
5 to establish a motor carrier organization. The organization
6 shall obtain authorization from the commission before its
7 members enter into any discussions concerning a common tariff.
8 The commission shall not enter an order authorizing a motor
9 carrier organization except after notice and public hearing
10 requirements are met. The commission may authorize the
11 creation of a motor carrier organization if the organization:

12 (1) allows a member carrier to discuss a
13 tariff proposal filed with it, provided that only those
14 carriers with authority to participate in the transportation to
15 which the proposal applies may vote upon the proposal;

16 (2) does not interfere with a member carrier's
17 right to establish its own tariff and does not change or cancel
18 an independently established tariff;

19 (3) does not file a protest or complaint with
20 the commission against a tariff item independently published by
21 or for the account of a member carrier;

22 (4) does not permit its employees or an
23 employee committee to file or act upon a proposal effecting a
24 change in a tariff item published by or for the account of a
25 member carrier;

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1 (5) makes available, upon request, the name of
2 the proponent of a rate or tariff item filed with it, admits
3 the public to a meeting at which rates or tariff items will be
4 discussed or voted upon and makes available the vote cast by a
5 member carrier on a proposal before the motor carrier
6 organization;

7 (6) prohibits a carrier to vote on behalf of
8 one or more other member carriers without specific written
9 notarized authority from the member carrier being represented;

10 (7) makes a final disposition of a rate or
11 tariff item filed with the motor carrier organization within
12 one hundred twenty days from the date the proposal is filed,
13 except that if unusual circumstances require, the organization
14 may extend the period, subject to review by the commission;

15 (8) adopts reasonable quorum standards for its
16 meetings; and

17 (9) will propose common tariffs for approval
18 by the commission.

19 B. A member carrier of the organization shall file
20 with the commission information as the commission may by rule
21 prescribe.

22 C. A motor carrier organization approved by the
23 commission pursuant to this section shall be subject to
24 accounting, record-keeping, reporting and inspection
25 requirements as the commission may by rule prescribe.

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1 D. The commission may, upon complaint or upon its
2 own initiative, investigate and determine whether a motor
3 carrier organization previously authorized by it is not in
4 conformity with the requirements of this section or with the
5 terms and conditions upon which the motor carrier organization
6 was granted authorization. The commission may modify or
7 terminate its authorization of a motor carrier organization
8 found to be noncompliant with the requirements of this rule.

9 E. The antitrust laws of the state shall not apply
10 to discussions concerning a common tariff by member carriers of
11 a motor carrier organization authorized by the commission.

12 F. The motor carrier organization shall obtain
13 approval of a common tariff from the commission before its
14 member carriers may operate pursuant to the common tariff. The
15 commission shall not enter an order approving a common tariff
16 except after notice and public hearing requirements are met.
17 The commission may approve a common tariff if the common tariff
18 is limited to matters relating to transportation services
19 provided by the member carriers party to the common tariff.
20 The commission shall approve or disapprove a common tariff, in
21 whole or in part, and may prescribe such terms and conditions
22 as the public interest may require. The antitrust laws of the
23 state shall not apply to common motor carriers who operate
24 pursuant to a common tariff approved by the commission.

25 G. In any proceeding in which a party to the

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1 proceeding alleges that a member carrier voted, discussed or
2 agreed on a common tariff in violation of this section, that
3 party has the burden of showing that the vote, discussion or
4 agreement occurred. A showing of parallel behavior shall not
5 by itself satisfy that burden.

6 Section 24. [NEW MATERIAL] MOTOR VEHICLE LEASES. --

7 A. An intrastate motor carrier shall not lease a
8 motor vehicle or operate a leased motor vehicle without
9 approval of each motor vehicle lease from the commission. The
10 commission may approve a motor vehicle lease without notice or
11 a public hearing.

12 B. A motor carrier shall file a separate motor
13 vehicle lease for each motor vehicle to be leased.

14 C. The commission shall not approve a proposed
15 motor vehicle lease if it finds that the purpose of the motor
16 vehicle lease is to circumvent a provision of the Motor Carrier
17 Act or rule of the commission.

18 D. The commission shall by rule specify which of
19 the two parties to a motor vehicle lease will be responsible
20 for complying with the financial responsibility and safety
21 requirements of the Motor Carrier Act and the rules of the
22 commission.

23 Section 25. [NEW MATERIAL] HOUSEHOLD GOODS OPERATIONS. --

24 A. An intrastate common motor carrier of household
25 goods shall be responsible for acts or omissions of its agents

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1 that relate to the performance of household goods
2 transportation services, including accessorial or terminal
3 services, that are within the actual or apparent authority of
4 the agent derived from or ratified by the common motor carrier
5 of household goods.

6 B. An intrastate common motor carrier of household
7 goods shall use reasonable care in selecting and retaining
8 household goods agents who are sufficiently knowledgeable, fit,
9 willing and able to provide adequate household goods
10 transportation services, including accessorial and terminal
11 services, and to fulfill the obligations imposed upon them by
12 the Motor Carrier Act and by the common motor carrier.

13 C. If the commission has reason to believe from a
14 complaint or investigation that a household goods agent has
15 violated Subsection G or H of Section 33 of the Motor Carrier
16 Act, or is consistently unfit, unwilling or unable to provide
17 adequate household goods transportation services, including
18 accessorial and terminal services, the commission may issue to
19 that household goods agent notice of the complaint, specific
20 charges and the time and place for a hearing on the complaint.
21 The hearing shall be held no later than sixty days after
22 service of the complaint to the household goods agent. The
23 household goods agent has the right to appear at the hearing
24 and rebut the charges contained in the complaint.

25 D. If the household goods agent does not appear at

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1 the complaint hearing, or if the commission finds that the
2 household goods agent has violated Subsection G or H of Section
3 33 of the Motor Carrier Act, or is consistently unfit,
4 unwilling or unable to provide adequate household goods
5 transportation services, including accessorial and terminal
6 services, the commission shall issue an order to compel
7 compliance by the household goods agent. Thereafter, the
8 commission may issue an order to limit or prohibit the
9 household goods agent from any involvement in the provision of
10 household goods transportation services if, after notice and an
11 opportunity to be heard, it finds that the household goods
12 agent has failed to comply with the order within a reasonable
13 time after the date of its issuance, but in no event less than
14 thirty days after its issuance. A household goods agent may
15 file a petition with the commission seeking reconsideration of
16 an order entered by the commission pursuant to this section.

17 E. The commission shall adopt rules for the
18 following elements of household goods transportation services:

- 19 (1) rates;
- 20 (2) cost estimates, for which charges shall be
21 subject to the antitrust laws of this state;
- 22 (3) inventory;
- 23 (4) weighing;
- 24 (5) receipts and bills of lading;
- 25 (6) liability based on value established

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1 between the motor carrier and the shipper;

2 (7) joint transportation between common motor
3 carriers of household goods;

4 (8) household goods agents; and

5 (9) service standards.

6 F. In adopting rules for intrastate common motor
7 carriers of household goods, the commission shall consider:

8 (1) the level of performance that can be
9 achieved by a well-managed motor carrier of household goods;

10 (2) the degree of harm to individual shippers
11 that could result from a violation of the rule;

12 (3) the need to deter abuses that result in
13 harm to shippers;

14 (4) service requirements of motor carriers of
15 household goods;

16 (5) the cost of compliance in relation to the
17 benefits to shippers to be achieved from such compliance; and

18 (6) the need to encourage motor carriers of
19 household goods to offer service responsive to shippers' needs.

20 G. The antitrust laws shall not apply to
21 discussions or agreements between an intrastate common motor
22 carrier of household goods and its authorized agents, whether
23 or not an agent is also a motor carrier of household goods,
24 related solely to:

25 (1) rates for the transportation of household

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1 goods under the authority of the principal carrier;

2 (2) accessorial, terminal, storage or other
3 charges for transportation services incidental to the
4 transportation of household goods transported under the
5 authority of the principal carrier;

6 (3) allowances relating to transportation of
7 household goods under the authority of the principal carrier;
8 or

9 (4) ownership of a common motor carrier of
10 household goods by an agent or membership on the board of
11 directors of any common motor carrier of household goods by an
12 agent.

13 Section 26. [NEW MATERIAL] HOUSEHOLD GOODS VOLUNTARY
14 DISPUTE SETTLEMENT PROGRAMS. --

15 A. A common motor carrier of household goods may
16 submit an application to the commission to establish a program
17 to settle disputes between shippers and common motor carriers
18 of household goods concerning the transportation of household
19 goods. The application shall be in a form and contain
20 information as the commission may by rule require.

21 B. The commission shall review and approve, within
22 forty-five days of the filing of an application, a program for
23 settling disputes concerning the transportation of household
24 goods that meets the requirements of Subsection C of this
25 section.

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1 C. The commission shall not approve a program for
2 settling disputes concerning the transportation of household
3 goods unless the program is a fair and expeditious method for
4 settling disputes and complies with each of the following
5 requirements and rules the commission may prescribe:

6 (1) the program is designed to prevent a motor
7 carrier from having any special advantage in a case in which
8 the shipper resides or does business at a place distant from
9 the motor carrier's place of business;

10 (2) the program provides adequate notice of
11 its availability, including a concise, understandable and
12 accurate summary of the program and disclosure of the legal
13 effects of using the program. The notice shall be given to the
14 shipper before the shipper tenders the household goods to the
15 motor carrier for transportation;

16 (3) upon request of a shipper, the motor
17 carrier shall promptly provide forms and other information
18 necessary to initiate an action to resolve a dispute under the
19 program;

20 (4) a person authorized pursuant to the
21 program to settle disputes shall be independent of the parties
22 to the dispute and shall be capable, as determined by rules
23 prescribed by the commission, to resolve disputes fairly and
24 expeditiously. The program shall ensure that a person chosen
25 to settle a dispute is authorized and able to obtain from the

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1 shipper or motor carrier any material and relevant information
2 necessary to carry out a fair and expeditious decision-making
3 process;

4 (5) the person settling the dispute may charge
5 the shipper a fee of not more than twenty-five dollars (\$25.00)
6 for instituting a proceeding under the program if the program
7 is binding solely on the carrier, but shall not charge the
8 shipper a fee otherwise. The person settling the dispute shall
9 refund the fee to the shipper in a case in which the dispute is
10 settled in favor of the shipper, unless the person settling the
11 dispute determines that the refund is inappropriate;

12 (6) the program shall not require the shipper
13 to agree to use the dispute settlement program prior to the
14 time that a dispute arises;

15 (7) the program may provide for an oral
16 presentation of a dispute concerning transportation of
17 household goods by a party to the dispute or a party's
18 representative, but an oral presentation shall not be made
19 unless the parties to the dispute expressly agree to the
20 presentation and the date, time and location of the
21 presentation; and

22 (8) a person settling a dispute under the
23 program shall, as expeditiously as possible, but no later than
24 sixty days after receipt of written notification of the
25 dispute, render a decision based on the information gathered;

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1 except that, in a case in which a party to the dispute fails to
2 timely provide information that the person settling the dispute
3 may reasonably require, the person settling the dispute may
4 extend the sixty-day period for a reasonable period of time. A
5 decision resolving a dispute may include remedies appropriate
6 under the circumstances, including repair, replacement, refund
7 or reimbursement for expenses and compensation for damages.

8 D. The commission may investigate at any time the
9 functioning of a program approved under this section and may,
10 after notice and an opportunity to be heard, suspend or revoke
11 its approval for failure to meet the requirements of this
12 section and rules as the commission may prescribe.

13 E. In a court action to resolve a dispute between a
14 shipper and a common motor carrier of household goods,
15 concerning the transportation of household goods by the
16 carrier, the shipper shall be awarded reasonable attorney fees
17 if:

18 (1) the shipper submits a claim to the carrier
19 within one hundred twenty days after the date the shipment is
20 delivered or the date delivery is scheduled, whichever is
21 later; and

22 (2) the shipper prevails in the court action;
23 and

24 (3) a dispute settlement program approved
25 under this section was not available for use by the shipper to

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1 resolve the dispute; or

2 (4) a decision resolving the dispute was not
3 rendered under a dispute settlement program approved under this
4 section within sixty days or an extension of the sixty-day
5 period; or

6 (5) the court proceeding is to enforce a
7 decision rendered under a dispute settlement program approved
8 under this section and is instituted after the period for
9 performance under the decision has elapsed.

10 F. In a court action to resolve a dispute between a
11 shipper and a common motor carrier of household goods
12 concerning the transportation of household goods by the
13 carrier, the carrier shall be awarded reasonable attorney fees
14 by the court only if the shipper brought the action in bad
15 faith:

16 (1) after resolution of the dispute under a
17 dispute settlement program approved under this section; or

18 (2) after institution of a proceeding by the
19 shipper to resolve the dispute under a dispute settlement
20 program approved under this section; and before:

21 (a) the expiration of the sixty-day
22 period or extension of the sixty-day period for resolution of
23 the dispute; and

24 (b) a decision resolving the dispute is
25 rendered under the program.

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1 Section 27. ~~[NEW MATERIAL]~~ INVOLUNTARY SUSPENSION,
2 REVOCATION OR AMENDMENT OF OPERATING AUTHORITIES--
3 REINSTATEMENT. --

4 A. The ~~com~~mission shall immediately suspend,
5 without notice or a public hearing, the operating authority of
6 a motor carrier for failure to continuously maintain the forms
7 and amounts of financial responsibility prescribed by
8 ~~com~~mission rule.

9 B. The ~~com~~mission may immediately suspend, without
10 notice or a public hearing, the operating authority of a motor
11 carrier for violation of a safety requirement of the Motor
12 Carrier Act, the ~~com~~mission's rules or the rules of the motor
13 transportation division of the department of public safety, if
14 the violation endangers the public health or safety.

15 C. The ~~com~~mission may, upon complaint or the
16 ~~com~~mission's own initiative and after notice and a public
17 hearing, if required, order involuntary suspension, revocation
18 or amendment, in whole or in part, of an operating authority
19 for failure to:

- 20 (1) comply with a provision of the Motor
21 Carrier Act;
22 (2) comply with a lawful order or rule of the
23 ~~com~~mission;
24 (3) comply with a term, condition or
25 limitation of an operating authority; or

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1 (4) render reasonably continuous and adequate
2 service under a certificate or permit.

3 D. The commission may approve an application for
4 reinstatement of an operating authority following involuntary
5 suspension if it finds, after notice and public hearing
6 requirements are met, that:

7 (1) the reasons for the involuntary suspension
8 no longer pertain; and

9 (2) the owner of the operating authority is
10 fit, willing and able to provide the authorized transportation
11 services and to comply with the Motor Carrier Act and the rules
12 of the commission.

13 Section 28. [NEW MATERIAL] DESIGNATION OF AN AGENT FOR
14 SERVICE OF PROCESS. --

15 A. An applicant for an operating authority shall
16 file with the commission an appointment in writing of a
17 resident agent for service of process. The appointment shall
18 specify the address of the agent and shall stipulate that
19 service upon the appointed agent of process of the commission
20 or of a court shall have the same force and effect as if
21 service had been made personally upon the motor carrier within
22 this state. The appointment shall continue in force until the
23 motor carrier files an appointment of a substitute agent, or
24 until liability against the motor carrier growing out of its
25 operations in the state has terminated. A copy of the

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1 appointment, duly certified by the commission, shall be
2 accepted as sufficient evidence of appointment of an agent in a
3 court of the state.

4 B. If a motor carrier owning an operating authority
5 from the commission operates without appointing a resident
6 agent for service of process, or the commission has
7 unsuccessfully attempted to serve process upon the designated
8 resident agent, the motor carrier shall be deemed to have
9 appointed the secretary of state as its resident agent for
10 service of process in an action or proceeding against the motor
11 carrier growing out of an accident, collision or transaction in
12 which the motor carrier may be involved by operating in this
13 state.

14 C. If the secretary of state is served with process
15 directed to a motor carrier owning an operating authority from
16 the commission, the secretary of state shall forward the
17 process by certified mail to the motor carrier at the address
18 shown on its last change of address report, annual report or
19 application with respect to its operating authority, whichever
20 is most recent. The secretary of state shall file a
21 certificate of service with the commission, which shall be
22 accepted as prima facie proof of service.

23 D. The secretary of state shall assess to the motor
24 carrier the fee prescribed in Section 36 of the Motor Carrier
25 Act for a process from a court served upon the secretary of

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1 state but shall not charge a fee for service of commission
2 process.

3 E. The principal motor carrier of a household goods
4 agent shall be deemed to be the agent for service of process of
5 the household goods agent unless the household goods agent
6 notifies the commission in writing of the substitution of
7 another agent for service of process.

8 Section 29. [NEW MATERIAL] REPORTS AND RECORDS. --

9 A. The commission shall establish reasonable
10 requirements with respect to reports, records and uniform
11 systems of accounts and preservation of records for motor
12 carriers.

13 B. The commission may require a motor carrier
14 owning operating authority from the commission to prepare and
15 transmit to the commission an annual report of its operations.
16 The report shall be in the form, contain specific information,
17 including financial information, and be due on a date as the
18 commission may by rule require. Financial data filed by motor
19 carriers in annual reports shall not be made available for
20 inspection by the public.

21 C. The commission or its employees or duly
22 authorized agents shall, at all times, have access to:

23 (1) land, buildings, improvements to real
24 property and equipment of motor carriers used in connection
25 with their operations; and

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(2) records kept by motor carriers.

D. The commission may, by order, require a motor carrier subject to the Motor Carrier Act, or its officers or agents, to produce within this state at such reasonable time and place as it may designate, original or certified copies of records regardless of where they are kept by the motor carrier when their production is pertinent to a matter before the commission, in order that the commission may examine them.

E. The motor transportation division of the department of public safety shall furnish to the commission all information needed or required by the commission to carry out its responsibilities when the information is obtainable only through field enforcement.

Section 30. [NEW MATERIAL] UNAUTHORIZED CARRYING OF PERSONS PROHIBITED.--A motor carrier not authorized to transport persons shall not carry a person, including a hitchhiker, except on-duty employees of the motor carrier, commission representatives on official business or in case of an emergency.

Section 31. [NEW MATERIAL] WITNESSES-- SUBPOENAS-- SERVICE OF PROCESS.--

A. If the commission orders a person to appear before it, the commission shall compensate the witness one full day's per diem plus mileage as provided for employees in the Per Diem and Mileage Act. The state shall pay such

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1 compensation out of the motor transportation fee fund pursuant
2 to rules of the department of finance and administration.

3 Witnesses subpoenaed by parties other than the commission shall
4 be paid the same compensation by the party issuing the
5 subpoena.

6 B. A person shall not be excused from testifying or
7 producing documentary evidence before the commission or a court
8 in obedience to a subpoena of the commission issued pursuant to
9 the Motor Carrier Act on the ground that the testimony or
10 documentary evidence required of the person may tend to
11 incriminate him or subject him to a penalty. A person shall
12 not be prosecuted or subjected to a penalty for a transaction
13 or matter about which he may be required to testify or produce
14 documentary evidence; provided that a person testifying shall
15 not be exempt from prosecution and punishment for perjury
16 committed in testifying. A person shall not be required to
17 testify or produce documentary evidence in response to an
18 inquiry not pertinent to a question lawfully before the
19 commission or court for determination.

20 C. Upon request of a member of the commission, a
21 district court may issue a writ of attachment to a person who
22 fails to comply with a subpoena issued by the commission
23 compelling the person to comply with the subpoena. The court
24 shall have the power to punish for contempt in the same manner
25 as for disobedience of a subpoena issued by the court.

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1 D. A member of the commission may administer an
2 oath, certify to an official act, issue a subpoena and compel
3 the attendance of a witness and the production of evidence in
4 hearings before the commission for the purposes provided in the
5 Motor Carrier Act.

6 E. The commission may issue and serve process on
7 the person affected by delivering a copy of the process, signed
8 by a member of the commission, to the person or to an officer
9 or agent of the person. An employee of the commission, a duly
10 authorized law enforcement officer or a person over the age of
11 eighteen who is not a party to the proceeding may serve process
12 and shall return a copy of the process served, with an
13 endorsement of service, to the commission. The endorsed
14 process shall be entered into the record of the proceeding and
15 shall be prima facie evidence that the process was duly served.

16 F. The commission may in writing authorize a
17 commissioner, the chief of staff or other person to investigate
18 and take testimony regarding a matter pending before the
19 commission.

20 Section 32. [NEW MATERIAL] ADMINISTRATIVE PENALTIES. --

21 A. If the commission finds after investigation that
22 a provision of the Motor Carrier Act or an order or rule of the
23 commission is being, has been or is about to be violated, it
24 may issue an order specifying the actual or proposed acts or
25 omissions to act that constitute a violation and require that

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1 the violation be discontinued, rectified or prevented.

2 B. Notwithstanding the existence of any other
3 penalties, the commission may assess an administrative fine of
4 not more than ten thousand dollars (\$10,000) for each violation
5 of a provision of the Motor Carrier Act or of a lawful rule or
6 order of the commission. In case of a continuing violation,
7 each day's violation shall be deemed to be a separate and
8 distinct offense.

9 C. Notwithstanding the existence of other
10 penalties, the commission may assess an administrative fine of
11 not more than ten thousand dollars (\$10,000) against a person
12 knowingly using a motor carrier not properly authorized by the
13 commission.

14 D. All penalties accruing under the Motor Carrier
15 Act shall be cumulative, and a suit for recovery of one penalty
16 shall not be a bar to or affect the recovery of any other
17 penalty or be a bar to any criminal prosecution under the Motor
18 Carrier Act.

19 Section 33. [NEW MATERIAL] CRIMINAL AND CIVIL
20 PENALTIES. --

21 A. A person who knowingly makes a false statement
22 of material fact under oath in a commission proceeding, whether
23 orally or in writing, shall be guilty of perjury.

24 B. A person who willfully makes a false return of
25 process or report to the commission or a member or employee of

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1 the commission, and a person who knowingly aids or abets a
2 person who willfully makes a false return of process or report
3 to the commission or a member or employee of the commission,
4 shall be guilty of a felony, and upon conviction shall be
5 imprisoned for not more than five years.

6 C. A person who willfully makes a false entry in
7 records required by the Motor Carrier Act or the rules of the
8 commission, willfully destroys, mutilates or by other means
9 willfully falsifies the records or willfully neglects or fails
10 to make full, true and correct entries of all facts, shall be
11 guilty of a felony and upon conviction shall be imprisoned for
12 not more than five years.

13 D. An employee of the commission who divulges
14 information about an inspection, examination or investigation
15 of a record or of the property and facilities of a motor
16 carrier, except insofar as may be authorized by the commission
17 or a court of competent jurisdiction, shall be guilty of a
18 misdemeanor and upon conviction shall be fined not more than
19 one thousand dollars (\$1,000).

20 E. A person who violates or who procures, aids or
21 abets in the violation of a provision of the Motor Carrier Act
22 or a rule or order of the commission shall be guilty of a
23 misdemeanor and upon conviction shall be fined not more than
24 one thousand dollars (\$1,000), imprisoned for not more than
25 ninety days, or both.

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1 F. A motor carrier shall be guilty of a misdemeanor
2 and upon conviction shall be fined not more than five hundred
3 dollars (\$500), imprisoned for not more than six months, or
4 both, if the motor carrier:

5 (1) refuses to permit examination of its
6 records;

7 (2) conceals, destroys or mutilates its
8 records;

9 (3) attempts to conceal, destroy or mutilate
10 its records; or

11 (4) removes its records beyond the limits of
12 the state for the purpose of preventing examination.

13 G. A person who commits weight-bumping shall be
14 guilty of a felony and upon conviction shall be fined not less
15 than one thousand dollars (\$1,000) nor more than ten thousand
16 dollars (\$10,000), imprisoned for not more than two years, or
17 both.

18 H. A person shall be assessed a civil penalty of
19 not more than two thousand dollars (\$2,000) for each violation
20 and not more than five thousand dollars (\$5,000) for each
21 subsequent violation if the person knowingly engages in or
22 authorizes an agent or other person to:

23 (1) falsify the documents used in the
24 transportation of household goods that evidence the weight of
25 shipment; or

1 (2) charge for accessorial services that are
2 not performed, or for which the carrier is not entitled to be
3 compensated, in a case in which such services are not
4 reasonably necessary for the safe and adequate transportation
5 of the shipment.

6 I. A law enforcement officer of the state shall
7 arrest and the district attorney and attorney general shall
8 prosecute a violation of the Motor Carrier Act.

9 Section 34. [NEW MATERIAL] ACTIONS TO ENFORCE COMMISSION
10 ORDERS. --If a person fails to comply with an order of the
11 commission within the time prescribed in the order or within
12 thirty days after the order is entered, whichever is later,
13 unless a stay has been granted, the commission shall seek
14 enforcement of the order in the district court for Santa Fe
15 county. The enforcement hearing shall be held on an expedited
16 basis. At the hearing, the sole question shall be whether the
17 person has failed to comply with the order.

18 Section 35. [NEW MATERIAL] APPEAL TO SUPREME COURT. --

19 A. A motor carrier or other interested person
20 aggrieved by a final order or determination of the commission
21 issued pursuant to the Motor Carrier Act may appeal to the
22 supreme court within thirty days. The appellant shall pay to
23 the commission the costs of preparing and transmitting the
24 record to the court.

25 B. The pendency of an appeal shall not

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1 automatically stay the order appealed from. The appellant may
2 petition the commission or the supreme court for a stay of the
3 order.

4 C. The appeal shall be on the record of the hearing
5 before the commission and shall be governed by the appellate
6 rules applicable to administrative appeals. The supreme court
7 shall affirm the commission's order unless it is:

8 (1) arbitrary, capricious or an abuse of
9 discretion;

10 (2) not supported by substantial evidence in
11 the record; or

12 (3) otherwise not in accordance with law.

13 Section 36. [NEW MATERIAL] FEES. --

14 A. The commission shall charge and collect the
15 following fees:

16 (1) for filing an application for a
17 certificate as an intrastate common motor carrier of persons or
18 household goods, two hundred fifty dollars (\$250);

19 (2) for filing an application for a permit as
20 an intrastate contract motor carrier of persons or household
21 goods, two hundred fifty dollars (\$250);

22 (3) for filing an application for a warrant as
23 an intrastate commuter service, charter service, towing service
24 or motor carrier of property, twenty-five dollars (\$25.00);

25 (4) for filing an application for intrastate

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1 temporary authority as a common or contract motor carrier of
2 persons or household goods, one hundred dollars (\$100);

3 (5) for filing an application for extension of
4 temporary authority, fifty dollars (\$50.00);

5 (6) for filing an application for a change in
6 an intrastate tariff, two hundred dollars (\$200);

7 (7) for filing an application for lease or
8 transfer of a certificate or permit, two hundred dollars
9 (\$200);

10 (8) for filing an application for
11 reinstatement of a certificate or permit following voluntary or
12 involuntary suspension, one hundred dollars (\$100);

13 (9) for filing an application for voluntary
14 suspension of a certificate or permit, fifteen dollars
15 (\$15.00);

16 (10) for filing an application for a single
17 trip ticket, five dollars (\$5.00) per vehicle per trip;

18 (11) for a single state registration receipt
19 for interstate motor carriers, ten dollars (\$10.00) per vehicle
20 per registration year or portion of a registration year;

21 (12) for filing a change of name, ten dollars
22 (\$10.00);

23 (13) for filing proof of financial
24 responsibility, fifteen dollars (\$15.00) per filing;

25 (14) for filing an equipment lease, five

1 dollars (\$5.00) per vehicle leased;

2 (15) for a miscellaneous filing, five dollars
3 (\$5.00) per document;

4 (16) for certifying copies of a record, order
5 or operating authority, fifteen dollars (\$15.00);

6 (17) for copies of written commission
7 documents or records, one dollar (\$1.00) per page, in addition
8 to any applicable certification charge; and

9 (18) for copies of other commission records,
10 including electronic media, an amount set by the commission, in
11 addition to any applicable certification charge.

12 B. The secretary of state shall charge and collect
13 a fee of four dollars (\$4.00) for each process from a court
14 served upon the secretary of state as the designated agent for
15 service of process by operation of law.

16 C. The "motor transportation fee fund" is created
17 in the state treasury. The commission shall collect all fees
18 at the time an application is filed or service is provided, and
19 shall remit them to the state treasurer, who shall deposit them
20 in the fund. At the end of each month, the state treasurer
21 shall transfer the unencumbered balance in the fund to the
22 state road fund.

23 D. If a fee has been erroneously paid, the person
24 having paid the fee may apply for a refund in writing to the
25 commission no later than sixty days after the erroneous

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1 payment. Upon approval of the application by the commission,
2 the amount erroneously paid shall be refunded from the motor
3 transportation fee fund to the person who made the payment.

4 E. An application shall be fully completed within
5 sixty days or the fee submitted with the application shall be
6 forfeited to the state. If the applicant renews the
7 application, he shall pay the applicable fee.

8 Section 37. [NEW MATERIAL] ELECTRONIC FILING AND
9 CERTIFICATION OF DOCUMENTS--ELECTRONIC PAYMENT OF FEES.--

10 A. The commission may adopt rules permitting the
11 electronic filing of documents, including original documents,
12 and the certification of electronically filed documents when
13 filing or certification is required or permitted pursuant to
14 the Motor Carrier Act. The rules shall provide for the
15 appropriate treatment of electronic filings to satisfy
16 requirements for original documents or copies and shall provide
17 the requirements for signature with respect to electronic
18 filings. If the commission accepts electronic filing of a
19 document, it may accept for filing a document containing a copy
20 of a signature, however made.

21 B. The commission may accept a credit or debit card
22 or other means of payment, in lieu of cash or check, as payment
23 of a fee pursuant to the Motor Carrier Act. The commission
24 shall determine those credit or debit cards or other means of
25 payment that may be accepted for payment.

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1 Section 38. ~~[NEW MATERIAL]~~ EXEMPTIONS. -- The Motor Carrier
2 Act shall not apply to:

3 A. school buses, provided that school buses shall
4 be subject to applicable school bus safety provisions
5 established by the state transportation director;

6 B. United States mail carriers, unless they are
7 engaged in other business as common or contract motor carriers
8 of persons or household goods;

9 C. hearses, funeral coaches or other motor vehicles
10 belonging to or operated in connection with the business of a
11 funeral service practitioner licensed by the state;

12 D. a county or municipal public transportation
13 system; or

14 E. private carriers.

15 Section 39. ~~[NEW MATERIAL]~~ EFFECT ON MUNICIPAL POWERS. --
16 Nothing contained in the Motor Carrier Act shall be construed:

17 A. to limit or restrict the police jurisdiction or
18 power of a municipality over its streets, highways and public
19 places except as otherwise provided by law;

20 B. in respect to matters other than rates and
21 service regulations, to repeal a power of a municipality:

22 (1) to adopt and enforce reasonable police
23 regulations and ordinances in the interest of the public
24 safety, morals and convenience; or

25 (2) to protect the public against fraud,

1 imposition or oppression by motor carriers within their
2 respective jurisdiction.

3 Section 40. [NEW MATERIAL] TRANSITION. --

4 A. A certificate of public convenience and
5 necessity and a permit issued to an intrastate motor carrier of
6 persons or household goods by the commission under the
7 authority of previous acts shall remain in effect, subject to
8 the provisions of the Motor Carrier Act and the commission's
9 rules.

10 B. A certificate of public convenience and
11 necessity and a permit issued to an intrastate motor carrier of
12 property by the commission under the authority of previous acts
13 shall become null and void on July 1, 2003. The commission
14 shall issue a warrant to an intrastate motor carrier of
15 property upon surrender of its certificate of public
16 convenience and necessity or permit if, as of June 30, 2003,
17 the motor carrier has valid proof of financial responsibility
18 and current vehicle inspection certificates on file with the
19 commission. The commission shall not charge the warrant
20 application fee prescribed in Section 36 of the Motor Carrier
21 Act.

22 C. A certificate of registration issued to a
23 commuter vanpool or farm carrier by the commission under the
24 authority of previous acts shall become null and void on July
25 1, 2003. The commission shall issue a warrant to a commuter

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1 service or motor carrier of property, ~~commuter~~ vanpool or farm
2 carrier under previous acts upon surrender of its certificate
3 of registration if, as of June 30, 2003, the motor carrier has
4 valid proof of financial responsibility and current vehicle
5 inspection certificates on file with the ~~commission~~. The
6 ~~commission~~ shall not charge the warrant application fee
7 prescribed in Section 36 of the Motor Carrier Act.

8 D. A warrant issued to an intrastate charter
9 service or a motor carrier of property by the ~~commission~~
10 pursuant to its rules shall remain in effect, subject to the
11 provisions of the Motor Carrier Act and the ~~commission's~~ rules.

12 Section 41. Section 65-1-6 NMSA 1978 (being Laws 1967,
13 Chapter 97, Section 8, as amended) is amended to read:

14 "65-1-6. FIELD ENFORCEMENT OF MOTOR CARRIER ACT AND
15 REGULATIONS. -- The department [~~has the authority to~~] shall:

16 A. enforce in the field the provisions of the Motor
17 Carrier Act and the regulations promulgated by [~~the state~~
18 ~~corporation-commission or~~] the public regulation ~~commission~~
19 pursuant to that act; and

20 B. maintain sufficient personnel in the field to
21 enforce the provisions of the Motor Carrier Act and the
22 regulations promulgated by [~~the state corporation-commission~~
23 ~~or~~] the public regulation ~~commission~~ pursuant to that act."

24 Section 42. Section 66-7-413 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 484, as amended) is amended to read:

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1 "66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL
2 NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES. --

3 A. The department and local highway authorities
4 may, in their discretion, upon application in writing and good
5 cause being shown, issue a special permit in writing
6 authorizing the applicant to operate or move a vehicle or load
7 of a size or weight exceeding the maximum specified in Sections
8 66-7-401 through 66-7-416 NMSA 1978 on any highway under the
9 jurisdiction of the state [~~highway~~] transportation commission
10 or local authorities. Except for the movement of manufactured
11 homes, a permit may be granted, in cases of emergency, for the
12 transportation of loads on a certain unit or combination of
13 equipment for a specified period of time not to exceed one
14 year, and the permit shall contain the route to be traversed,
15 the type of load to be transported and any other restrictions
16 or conditions deemed necessary by the body granting the permit.
17 In every other case, the permit shall be issued for a single
18 trip and may designate the route to be traversed and contain
19 any other restrictions or conditions deemed necessary by the
20 body granting the permit. Every permit shall be carried in the
21 vehicle to which it refers and shall be opened for inspection
22 to any peace officer. It is a misdemeanor for any person to
23 violate any of the conditions or terms of the special permit.

24 B. The department shall charge and collect, when
25 the movement consists of any load of a width of twenty feet or

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1 greater for a distance of five miles or more, the sum of three
2 hundred dollars (\$300) a day or fraction thereof to defray the
3 cost of state or local police escort. The permit issued and
4 the fee charged shall be based upon the entire movement at one
5 time requiring police escort and not upon the number of
6 vehicles involved.

7 C. The department shall promulgate regulations in
8 accordance with the State Rules Act pertaining to safety
9 practices, liability insurance and equipment for escort
10 vehicles provided by the motor carrier ~~[himself]~~ itself and for
11 escort vehicles provided by a private business in this state.

12 (1) ~~[If a motor carrier provides his own~~
13 ~~escort vehicles and personnel]~~ The department ~~[shall not charge~~
14 ~~an escort fee but]~~ shall provide ~~[the motor carrier]~~ escort
15 personnel with a copy of applicable ~~[regulations]~~ rules and
16 shall inspect the escort vehicles for the safety equipment
17 required by the regulations. If the escort vehicles and
18 personnel meet the requirements set forth in the ~~[regulations~~
19 ~~and if the motor carrier holds a valid certificate of public~~
20 ~~convenience and necessity or permit, as applicable, issued~~
21 ~~pursuant to Chapter 65, Article 2 NMSA 1978]~~ rules, the
22 department shall issue the special permit but shall not charge
23 an escort fee. If a motor carrier provides its own escort
24 vehicles and personnel, the department shall require that the
25 motor carrier have a warrant issued by the public regulation

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1 commi ssi on.

2 [~~(2)~~ If the escort service is a private
3 business, the business shall have applied to the state
4 corporation regulation ~~commi ssi on~~ for and been issued a permit
5 or certificate to operate as a contract or ~~common~~ motor carrier
6 pursuant to Chapter 65, Article 2 NMSA 1978. The state
7 corporation ~~commi ssi on~~ shall supply copies of applicable
8 regulations to the business by mail and shall supply additional
9 copies upon request. If the escort vehicles and personnel meet
10 the requirements set forth in the regulations and if the escort
11 service holds a certificate, the special permit shall be issued
12 and the department shall not charge an escort fee.

13 ~~(3)~~] (2) The movement of vehicles upon the
14 highways of this state requiring a special permit and required
15 to use an escort of the type noted in [~~Paragraphs~~] Paragraph
16 (1) [~~and (2)~~] of this subsection is subject to department
17 authority and inspection at all times.

18 [~~(4)~~] (3) The state highway and transportation
19 department shall conduct engineering investigations and
20 engineering inspections to determine which four-lane highways
21 are safe for the operation or movement of manufactured homes
22 without an escort. After making that determination, the state
23 highway and transportation department shall hold public
24 hearings in the area of the state affected by the
25 determination, after which it may adopt regulations designating

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1 those four-lane highways as being safe for the operation or
2 movement of manufactured homes without an escort. If any
3 portion of such a four-lane highway lies within the boundaries
4 of a municipality, the state highway and transportation
5 department, after obtaining the approval of the municipal
6 governing body, shall include such portions in its regulations.

7 D. Except for the movement of manufactured homes,
8 special permits may be issued for a single vehicle or
9 combination of vehicles by the department for a period not to
10 exceed one year for a fee of sixty dollars (\$60.00). The
11 permits may allow excessive height, length and width for a
12 vehicle or combination of vehicles or load thereon and may
13 include a provision for excessive weight if the operation is to
14 be within the vicinity of a municipality.

15 E. Special permits for a single trip for a vehicle
16 or combination of vehicles or load thereon of excessive weight,
17 width, length and height may be issued for a single vehicle for
18 a fee of fifteen dollars (\$15.00).

19 F. If the vehicle for which a permit is issued
20 under this section is a manufactured home, the department or
21 local highway authority issuing the permit shall furnish the
22 following information to the property tax division of the
23 department, which shall then forward the information:

24 (1) to the county assessor of any county from
25 which a manufactured home is being moved, the date the permit

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1 was issued, the location being moved from, the location being
2 moved to if within the same county, the name of the owner of
3 the manufactured home and the identification and registration
4 numbers of the manufactured home;

5 (2) to the county assessor of any county in
6 this state to which a manufactured home is being moved, the
7 date the permit was issued, the location being moved from, the
8 location being moved to, the name of the owner of the
9 manufactured home and the registration and identification
10 numbers of the manufactured home; and

11 (3) to the owner of a manufactured home having
12 a destination in this state, notification that the information
13 required in Paragraphs (1) and (2) of this subsection is being
14 given to the respective county assessors and that manufactured
15 homes are subject to property taxation.

16 G. Except as provided in Subsection H of this
17 section, if the movement of a manufactured home originates in
18 this state, no permit shall be issued under Subsection F of
19 this section until the owner of the manufactured home or his
20 authorized agent obtains and presents to the department proof
21 that a certificate has been issued by the county assessor or
22 treasurer of the county in which the manufactured home movement
23 originates showing that either:

24 (1) all property taxes due or to become due on
25 the manufactured home for the current tax year or any past tax

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1 years have been paid, except for manufactured homes located on
2 an Indian reservation; or

3 (2) no liability for property taxes on the
4 manufactured home exists for the current tax year or any past
5 tax years, except for manufactured homes located on an Indian
6 reservation.

7 H. The movement of a manufactured home from the lot
8 or business location of a manufactured home dealer to its
9 destination designated by an owner-purchaser is not subject to
10 the requirements of Subsection G of this section if the
11 manufactured home movement originates from the lot or business
12 location of the dealer and the manufactured home was part of
13 his inventory prior to the sale to the owner-purchaser;
14 however, the movement of a manufactured home by a dealer or his
15 authorized agent as a result of a sale or trade-in from a
16 nondealer-owner is subject to the requirements of Subsection G
17 of this section whether the destination is the business
18 location of a dealer or some other destination.

19 I. No permit shall be issued under this section for
20 movement of a manufactured home whose width exceeds eighteen
21 feet with no more than a six-inch roof overhang on the left
22 side or twelve inches on the right side in addition to the
23 eighteen-foot width of the manufactured home. Manufactured
24 homes exceeding the limitations of this section shall only be
25 moved on dollies placed on the front and the rear of the

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underscored material = new
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1 structure.

2 J. The secretary may by regulation provide for
3 movers of manufactured homes to self-issue permits for certain
4 sizes of manufactured homes over specific routes; however, in
5 no case may the cost of each permit be less than fifteen
6 dollars (\$15.00).

7 K. The secretary may provide by regulation for
8 dealers of implements of husbandry to self-issue permits for
9 the movement of certain sizes of implements of husbandry from
10 the lot or business location of the dealer over specific routes
11 with specific escort requirements, if necessary, to a
12 destination designated by an owner-purchaser or for purposes of
13 a working demonstration on the property of a proposed owner-
14 purchaser. The department shall charge a fee for each self-
15 issued permit not to exceed fifteen dollars (\$15.00).

16 L. Any private motor carrier requesting an oversize
17 or overweight permit shall provide proof of insurance in at
18 least the following amounts:

- 19 (1) bodily injury liability, providing:
20 (a) fifty thousand dollars (\$50,000) for
21 each person; and
22 (b) one hundred thousand dollars
23 (\$100,000) for each accident; and

24 (2) property damage liability, providing
25 twenty-five thousand dollars (\$25,000) for each accident.

1 M ~~[Any common]~~ A motor carrier of manufactured
 2 homes requesting an oversize permit shall produce a copy of a
 3 ~~[form "e" or other acceptable]~~ warrant or single state
 4 registration receipt as evidence that the ~~[common]~~ motor
 5 carrier maintains the insurance minimums prescribed by the
 6 ~~[state corporation]~~ public regulation commission. "

7 Section 43. Section 66-8-116.2 NMSA 1978 (being Laws
 8 1989, Chapter 319, Section 13, as amended) is amended to read:

9 "66-8-116.2. PENALTY ASSESSMENT MISDEMEANORS-- MOTOR
 10 CARRIER ACT.--As used in the Motor Vehicle Code and the Motor
 11 Carrier Act, "penalty assessment misdemeanor" means, in
 12 addition to the definitions of that term in Sections 66-8-116
 13 and 66-8-116.1 NMSA 1978, violation of the following listed
 14 sections of the NMSA 1978 for which the listed penalty is
 15 established:

16 A. GENERAL

17 COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
18 Failure to register		
19 motor carrier	65-1-12	\$100.00
20 Failure to carry		
21 identification card	65-1-26	50.00
22 Failure to comply with		
23 [state corporation]		
24 <u>public regulation</u>		
25 <u>commission rules and</u>		

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1	regulations	[65-2-83] <u>Section 7 of</u>	
2		<u>the Motor Carrier Act</u>	50.00
3	Failure to [register		
4	interstate motor		
5	carrier with state		
6	corporation commission]	[65-2-115] <u>Section 7 of</u>	
7	<u>carry single state</u>	<u>the Motor Carrier Act</u>	50.00
8	<u>registration receipt issued</u>		
9	<u>by a base state</u>		
10	Failure to stop at		
11	designated		
12	registration place	65-5-1	100.00
13	Failure to obtain		
14	proper clearance		
15	certificates	65-5-3	100.00.
16	B. VEHICLE OUT-OF-SERVICE VIOLATIONS		
17	COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
18	Absence of braking action	65-3-9	\$100.00
19	Damaged brake lining or pads	65-3-9	50.00
20	Loose or missing brake		
21	components	65-3-12	100.00
22	Inoperable breakaway braking		
23	system	65-3-12	50.00
24	Defective or damaged brake		
25	tubing	65-3-12	50.00

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[bracketed material] = delete

1	Inoperative low pressure		
2	warning device	65-3-9	50.00
3	Reservoir pressure not		
4	maintained	65-3-12	100.00
5	Inoperative tractor		
6	protection valve	65-3-9	100.00
7	Damaged or loose air		
8	compressor	65-3-12	100.00
9	Audible air leak at brake		
10	chamber	65-3-12	50.00
11	Defective safety devices--		
12	chains or hooks	65-3-9	100.00
13	Defective towing or coupling		
14	devices	65-3-9	100.00
15	Defective exhaust systems	65-3-9	30.00
16	Frame defects-- trailers	65-3-12	100.00
17	Frame defects-- other	65-3-9	100.00
18	Defective fuel systems	65-3-9	50.00
19	Missing or inoperative		
20	lamps	65-3-9	25.00
21	Missing lamps on projecting		
22	loads	65-3-9	50.00
23	Missing or inoperative		
24	turn signal	65-3-9	25.00
25	Unsafe loading	65-3-8	100.00

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1	Excessive steering wheel		
2	play	65-3-9	100.00
3	Steering column defects	65-3-9	100.00
4	Steering box or steering		
5	system defects	65-3-9	100.00
6	Suspension system defects	65-3-9	50.00
7	Defective springs or spring		
8	assembly	65-3-9	50.00
9	Defective tires--steering		
10	axle	65-3-9	100.00
11	Defective tires--other axles	65-3-9	30.00
12	Defective wheels and rims	65-3-9	50.00
13	Defective or missing		
14	windshield wipers	65-3-9	30.00
15	Defective or inoperative		
16	emergency exit--bus	65-3-9	100.00.

C. DRIVER OUT-OF-SERVICE VIOLATIONS

18	COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
19	Driver's age	65-3-7	30.00
20	Driver not licensed for		
21	type of vehicle being		
22	operated	65-3-7	30.00
23	Failure to have valid		
24	commercial driver's license		
25	in possession	66-5-59	30.00

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1	No waiver of physical		
2	disqualification		
3	in possession	65-3-7	30.00
4	Sickness or fatigue	65-3-8	100.00
5	Driver disqualification	65-3-7	500.00
6	Exceeding the 10-hour		
7	driving rule	65-3-11	100.00
8	Exceeding the 15-hour on		
9	duty rule	65-3-11	100.00
10	Exceeding the 60 hours in 7		
11	days on duty rule	65-3-11	100.00
12	Exceeding 70 hours in 8		
13	days on duty rule	65-3-11	100.00
14	False log book	65-3-11	100.00.

D. HAZARDOUS MATERIALS OUT-OF-SERVICE VIOLATIONS

16	COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
17	Placarding violations	65-3-13	250.00
18	Cargo tank not meeting		
19	specifications	65-3-13	250.00
20	Internal valve operation		
21	violations	65-3-13	250.00
22	Hazardous materials		
23	packaging violations	65-3-13	250.00
24	Insecure load--hazardous		
25	materials	65-3-13	250.00

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1	Shipping papers violations	65-3-13	30.00
2	Shipment of forbidden		
3	combination of hazardous		
4	materials	65-3-13	250.00
5	No hazardous waste manifest	65-3-13	30.00
6	Bulk packaging marking		
7	violations	65-3-13	30.00
8	Cargo tank marking violations	65-3-13	30.00."

9 Section 44. REPEAL. -- Sections 65-2-80 through 65-2-127
10 and 65-4-1 through 65-4-18 NMSA 1978 (being Laws 1981, Chapter
11 358, Sections 1 through 36, Laws 1993, Chapter 95, Section 2,
12 Laws 1981, Chapter 358, Section 37, Laws 2001, Chapter 259,
13 Section 2, Laws 1981, Chapter 358, Section 38, Laws 1998,
14 Section 108, Chapter 75, Laws 1981, Chapter 358, Sections 42
15 through 46, Laws 1987, Chapter 134, Section 3, Laws 1981,
16 Chapter 358, Sections 47 and 48 and Laws 1933, Chapter 120,
17 Sections 1 through 17 and 19, as amended) are repealed.

18 Section 45. EFFECTIVE DATE. -- The effective date of the
19 provisions of this act is July 1, 2003.